

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|-------------------------------|---|--------------------------|
| CHRIS KELLY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 1:21-cv-01224-JPH-MG |
| |) | |
| BUREAU OF MOTOR VEHICLES, |) | |
| PETER LACY Commissioner, BMV, |) | |
| |) | |
| Defendants. |) | |

ORDER

Plaintiff Chris Kelly's complaint does not show that this Court has subject-matter jurisdiction, and he has not paid the filing fee or filed a motion to proceed *in forma pauperis*. See *dk*t. 1. He shall have until **June 25, 2021** to show cause why his case should not be dismissed without prejudice for lack of subject-matter jurisdiction and for nonpayment of his filing fee. The Clerk is **directed** to include a blank *in forma pauperis* form with Mr. Kelly's copy of this order.

I. Subject-matter jurisdiction

"Federal courts are courts of limited jurisdiction." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (citation omitted). To hear and rule on the merits of a case, a federal "court must have the power to decide the claim before it (subject-matter jurisdiction)." *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 562 (2017). "The party asserting federal jurisdiction bears the burden of demonstrating its existence." *Farnik v. F.D.I.C.*, 707 F.3d 717, 721 (7th Cir.

2013). And "[i]f the court determines at any time that it lacks subject-matter jurisdiction, [it] must dismiss the action." Fed. R. Civ. P. 12(h)(3); *see Evergreen Square of Cudahy v. Wis. Hous. & Econ. Dev. Auth.*, 776 F.3d 463, 465 (7th Cir. 2015) ("[F]ederal courts are obligated to inquire into the existence of jurisdiction *sua sponte*").

The Court does not appear to have jurisdiction over this case. The Supreme Court has explained the two general ways to establish subject-matter jurisdiction:

The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332. Section 1331 provides for federal-question jurisdiction, § 1332 for diversity of citizenship jurisdiction. A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim arising under the Constitution or laws of the United States. She invokes § 1332 jurisdiction when she presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently \$75,000.

Arbaugh v. Y&H Corp., 546 U.S. 500, 513 (2006) (citations and quotation omitted).

Mr. Kelly's complaint does not identify a federal claim. *See* dkt. 1 at 3. He alleges that the Bureau of Motor Vehicles violated Indiana state law, *see id.*, and this does not establish federal-question jurisdiction. Nor has Mr. Kelly established diversity jurisdiction. The complaint states that both he and Defendants are citizens of Indiana. *See id.* at 2. Diversity jurisdiction requires that "no plaintiff may be from the same state as any defendant." *Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 676 (7th Cir. 2006).

Because Mr. Kelly has not demonstrated subject-matter jurisdiction, his complaint must be dismissed. He shall have **through June 25, 2021**, to show cause why this action should not be dismissed for lack of subject-matter jurisdiction. If he fails to respond by this date, the Court will dismiss this case without prejudice.

II. Filing Fee

Mr. Kelly has also filed his complaint without paying the filing fee or demonstrating that he lacks the financial ability to do so. He **SHALL** either pay the filing fee or seek leave to proceed *in forma pauperis* **by June 25, 2021**. The **Clerk is directed** to include a form motion to proceed *in forma pauperis* with Mr. Kelly's copy of this order.

SO ORDERED.

Date: 5/24/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

CHRIS KELLY
7127 Sea Pine Dr.
Indianapolis, IN 46250